

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

JERE ENTERPRISES LLC,

Plaintiff,

v.

CITY OF BELLEVUE,

Defendant.

CASE NO. C16-1318 RAJ

ORDER

This matter comes before the Court on Defendant's Motion to Dismiss. Dkt. # 11. Plaintiff opposes the motion. Dkt. # 16. For the reasons set forth below, the Court **GRANTS** the motion in part.

I. BACKGROUND

The following is taken from Plaintiff's Complaint, which is assumed to be true for the purposes of this motion to dismiss. *Sanders v. Brown*, 504 F.3d 903, 910 (9th Cir. 2007). Plaintiff owns property located in the City of Bellevue. Dkt. # 1 (Compl.) ¶ 3.1. Plaintiff sought to develop on its property, and approached Defendant for an evaluation as to whether there are critical areas on its property and, if so, how those areas should be classified. *Id.* at ¶¶ 3.1-2. Plaintiff submitted its permit application to Defendant, and sought its substantive review of the property. *Id.* at ¶ 3.2. Defendant cancelled Plaintiff's

1 initial permit application without making a critical area determination. *Id.* Defendant is
2 required by law to provide notice about the application to the project proponent or property
3 owner. *Id.* at ¶ 3.6. Defendant recognized Plaintiff’s legal counsel as its authorized agent
4 and project proponent for the application, and thus provided Plaintiff’s legal counsel with
5 formal notice about the cancellation of Plaintiff’s application. *Id.* at ¶¶ 3.2, 3.6. Plaintiff
6 appealed Defendant’s decision to cancel the application through a Land Use Petition Act
7 (“LUPA”) claim in King County Superior Court. *Id.*

8 The parties resolved the LUPA claim through a judicially approved stipulation, and
9 agreed that Plaintiff would submit another permit application to Defendant for an
10 evaluation of its property. *Id.* at ¶ 3.3. After submitting its second application, Plaintiff had
11 multiple communications with Defendant regarding the status of the application. *Id.* at ¶¶
12 3.5, 3.7-11. During this time, Defendant treated Plaintiff’s legal counsel as the authorized
13 agent and project proponent for Plaintiff’s application. *Id.* at ¶ 3.5.

14 Over the course of four months, Plaintiff’s legal counsel—Plaintiff’s authorized
15 agent and project proponent for its application—contacted Defendant about the status of
16 the application, receiving assurance from Defendant that the application was moving
17 forward. *Id.* at ¶¶ 3.8-3.11. Several weeks passed without a response from Defendant about
18 the status of the application. *Id.* at ¶ 3.14. However, on July 22, 2016, Plaintiff learned that
19 Defendant issued its evaluation of Plaintiff’s property without proper notification to
20 Plaintiff or its authorized agent as required by Washington law. *Id.* at ¶¶ 3.14-5. Defendant
21 issued its evaluation of the property on July 7, 2016. *Id.* at ¶ 3.15. The deadline to appeal
22 the decision was July 21, 2016. *Id.* Plaintiff claims that because it did not receive proper
23 notice, it could not timely appeal Defendant’s decision. *Id.* at ¶ 3.19.

24 Defendant is now before the Court seeking dismissal, contending that Plaintiff has
25 failed to state claims upon which relief can be granted. Dkt. # 11. Defendant also argues
that Plaintiff has no valid claims under Washington law and 42 U.S.C. § 1983. Plaintiff
opposes the motion. Dkt. # 16.

LEGAL STANDARD

Dismissal under 12(b)(6) of the Federal Rules of Civil Procedure may be based on either the lack of a cognizable legal theory or the absence of sufficient facts alleged under such a theory. *Balistreri v. Pacifica Police Department*, 901 F.2d 696, 699 (9th Cir.1990). The rule requires the court to assume the truth of the complaint’s factual allegations and credit all reasonable inferences arising from those allegations. *Sanders v. Brown*, 504 F.3d 903, 910 (9th Cir. 2007). A court “need not accept as true conclusory allegations that are contradicted by documents referred to in the complaint.” *Manzarek v. St. Paul Fire & Marine Ins. Co.*, 519 F.3d 1025, 1031 (9th Cir. 2008). The plaintiff must point to factual allegations that “state a claim to relief that is plausible on its face.” *Bell Atlantic Corporation v. Twombly*, 550 U.S. 544, 568 (2007). To survive a motion to dismiss, the complaint does not require detailed factual allegations but must provide the grounds for entitlement to relief and not merely a “formulaic recitation” of the elements of a cause of action. *Id.* at 1965.

A court typically cannot consider evidence beyond the four corners of the complaint, although it may rely on a document to which the complaint refers if the document is central to the party’s claims and its authenticity is not in question. *Marder v. Lopez*, 450 F.3d 445, 448 (9th Cir. 2006). A court may also consider evidence subject to judicial notice. *United States v. Ritchie*, 342 F.3d 903, 908 (9th Cir. 2003).

II. DISCUSSION

A. Declaration of Robert A. Hyde

Generally, the scope of review on a motion to dismiss for failure to state claims is limited to the contents of the complaint. *Lee v. City of Los Angeles*, 250 F.3d 668, 688 (9th Cir. 2001). There are, however, two exceptions to this rule. *Id.* First, a court may consider “material which is properly submitted as part of the complaint” on a motion to dismiss without converting the motion into a motion for summary judgment. *Id.* at 668. “If the

1 documents are not physically attached to the complaint, they may be considered if the
2 documents' 'authenticity ... is not contested' and 'the plaintiff's complaint necessarily
3 relies' on them." *Id.* Second, under Federal Rule of Evidence 201, a court may take judicial
4 notice of matters of public notice. *Id.* Courts may take judicial notice of some public
5 records, including "records and reports of administrative bodies." *Interstate Natural Gas*
6 *Company v. Southern California Gas Company*, 209 F.2d 380, 385 (9th Cir. 1953).

7 Defendant attached a declaration from Robert A. Hyde to its motion to dismiss. The
8 declaration included three exhibits: (A) Stipulation and Order of Dismissal in King County
9 Court and Stipulation of Dismissal and Order before Hearing Examiner for the City of
10 Bellevue; (B) Plaintiff's Code Interpretation Application; and (C) Certification of Mailing
11 dated July 8, 2016 from Defendant. Plaintiff's complaint referred to the judicially approved
12 stipulations. Dkt. # 1 (Compl.) at ¶ 3.3.¹ The Court may therefore consider exhibit A when
13 deciding the instant motion. The Court also considers Defendant's exhibits B and C
14 attached to its motion to dismiss because Plaintiff's complaint necessarily relies on its
15 application to Defendant for a critical areas determination, and whether Plaintiff received
16 proper notice as required by Washington law. *Id.* at ¶¶ 3.2, 3.16.

17 **B. Municipal Liability**

18 Plaintiff alleges that Defendant violated 42 U.S.C. § 1983 when Defendant failed to
19 provide proper notice of its evaluation of Plaintiff's property to Plaintiff or its authorized
20 agent. Dkt. # 1 (Compl.) at ¶¶ 4.3, 4.4, 5.3, and 6.3.

21 Under 42 U.S.C. § 1983, a plaintiff must prove: (1) that a person acting under color
22 of state law (2) committed an act that deprived the claimant of some right, privilege, or
23 immunity by the Constitution or laws of the United States. *West v. Atkins*, 487 U.S. 42, 48

24 ¹ The Court acknowledges Plaintiff's argument that Exhibit B attached to Defendant's motion to dismiss is
25 an excerpt. As to any determinative issues presented in the instant motion, the Court considers the
document in its entirety, which has been provided to the Court as Exhibit 4 to the Declaration of Duana T.
Koloušková in Support of Motion to Remand Action to King County Superior Court. Dkt. # 15.

1 (1988). A local government unit or municipality can be sued as a “person” under § 1983.
2 *Monell v. Department of Social Service of New York*, 436 U.S. 658, 694 (1978). For
3 municipal liability, a plaintiff must satisfy four conditions: “(1) that plaintiff possesses a
4 constitutional right of which was deprived; (2) that the municipal had a policy; (3) that this
5 policy amounts to deliberate indifference to plaintiff’s constitutional right; and (4) that this
6 policy is the moving force behind the constitutional violation.” *Van Ort v. Estate of*
7 *Stanewich*, 92 F.3d 831, 835 (9th Cir. 1996). A municipality cannot, however, be held
8 liable under § 1983 solely because it employs a tortfeasor. *Monell*, 436 U.S. at 691.

9 A plaintiff seeking to impose liability on a municipality under § 1983 must identify
10 a municipal “policy” or “custom” that caused its injury. *Id.* There must be a “direct causal
11 link” between the policy or custom and the injury, and the plaintiff must be able to
12 demonstrate that the injury resulted from a “permanent and well settled practice.” *Anderson*
13 *v. Warner*, 451 F.3d 1063, 1070 (9th Cir. 2006). A municipal policy causes an injury where
14 the policy is the “moving force” behind the constitutional violation. *Crew v. Gates*, 27 F.3d
15 1432, 1444 (1994).

16 Plaintiff has not identified any conduct by Defendant—whether by policy, custom,
17 or otherwise—that directly resulted in any alleged constitutional violation. Dkt. # 1
18 (Compl.). Neither has Plaintiff alleged any facts suggesting that Defendant’s policy or
19 custom was the moving force behind the alleged constitutional violation. *Id.* Instead,
20 Plaintiff alleges that Defendant failed to follow its own established notice procedures. Dkt.
21 # 16 at 18-19. Notably, Plaintiff did not allege any facts suggesting that Defendant’s
22 established notice procedures are improper or constitutionally unsound. Thus, Plaintiff
23 failed to plead sufficiently particular allegations to state a plausible claim, and does not
24 have a legal theory of liability against Defendant under § 1983. *See Board of the County*
25 *Commissioners of Bryan County v. Brown*, 520 U.S. 397, 403, 405 (noting that where a
plaintiff claims municipal liability, a plaintiff must demonstrate that the alleged
constitutional deprivation was the product of a policy or custom of the local government,

1 and that rigorous standards of culpability and causation are applied to ensure that the
2 municipality is not held liable solely for the actions of employees). Accordingly, the Court
3 **GRANTS** the motion with respect to Plaintiff’s § 1983 claim.

4 **III. Supplemental Jurisdiction**

5 Under 28 U.S.C. § 1367(a), the Court has supplemental jurisdiction over all claims
6 within the same case or controversy as a claim conferring original jurisdiction. 28 U.S.C. §
7 1367(a). The Court may decline supplemental jurisdiction if it has dismissed all of the
8 claims conferring original jurisdiction. 28 U.S.C. § 1367(c). The Court also has discretion
9 to exercise or decline supplemental jurisdiction upon consideration of “the values of
10 judicial economy, convenience, fairness, and comity.” *Carnegie–Mellon University v.*
11 *Cohill*, 484 U.S. 343, 350 (1988). Further, the Court has “discretion under the doctrine of
12 pendent jurisdiction to remand a properly removed case to state court when all federal law
13 claims in the action have been eliminated and only pendent state law claims remain.” *Id.* at
14 345.

15 The Court dismissed Plaintiff’s federal claim upon which removal was originally
16 based. The Court therefore considers whether the principles of economy, convenience, and
17 fairness weigh in favor of remand rather than dismissal.

18 When considering judicial economy, the Court reviews the “investment of judicial
19 energy” into a case or controversy. *Rosado v. Wyman*, 397 U.S. 397, 403 (1970). In light of
20 the instant proceedings, judicial economy favors remand to state court. This case has not
21 proceeded to discovery or the summary judgment stage, and the parties have not presented
22 any oral arguments. In addition, Plaintiff’s remaining claims are predicated entirely on
23 state law. Under these circumstances, state court is a more appropriate forum.

24 The Court’s consideration of fairness also favors remand. The Court analyzes
25 whether “a surer-footed reading of state law would be available in state court.” *Schneider*

1 v. *TRW, Inc.*, 938 F.2d at 996. Plaintiff's remaining claims involve Washington law and
2 therefore would receive a "surer-footed" interpretation in state court. *Id.*

3 Finally, the Court considers comity. "Comity, in the legal sense, is neither a matter
4 of absolute obligation, on the one hand, nor of mere courtesy and good will, upon the
5 other." *Hilton v. Guyot*, 159 U.S. 113, 163–64 (1895). Further, "[n]eedless decisions of
6 state law should be avoided both as a matter of comity and to promote justice between the
7 parties, by procuring for them a surer-footed reading of applicable law." *Gibbs*, 383 U.S. at
8 726. For the same reasons that fairness favors remand, so does comity. Specifically, all
9 remaining claims in this case are based on state law, and therefore the federal court has the
10 opportunity to avoid "needless decisions of state law." *Id.*

11 IV. CONCLUSION

12 For the foregoing reasons, the Court **GRANTS** Defendant's motion in part. Dkt. #
13 11. The Court declines to exercise supplemental jurisdiction over Plaintiff's state law
14 claims. The Court **DIRECTS** the Clerk of Court to **REMAND** this case to the Superior
15 Court for the State of Washington, for King County.

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17 Dated this 8th day of March, 2018.

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21 The Honorable Richard A. Jones
22 United States District Judge
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